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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 266

CHESAPEAKE TRUCKING CO., INC., a Body Corporate,
Appellant,

vs.

INTERSTATE COMMON CARRIER COUNCIL OF MARYLAND, INC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF MARYLAND

STATEMENT AS TO JURISDICTION

HALE HAMMOND,
Counsel for Appellant.

CLAYTON W. BANNING,
LOUIS E. GOLDMAN,
Of Counsel.

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THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MARYLAND

Civil Action No. 3959

Three-Judge Court Case

INTERSTATE COMMON CARRIER COUNCIL OF MARYLAND, INC., THE BALTIMORE TRANSFER COMPANY, DAVIDSON TRANSFER AND STORAGE COMPANY, *Plaintiffs,*

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES OF AMERICA,

Defendants;

SCHREIBER TRUCKING CO., INC., A BODY CORPORATE, *Intervening Party Defendant*

STATEMENT OF SCHREIBER TRUCKING CO., INC., AS TO JURISDICTION UNDER RULE No. 12

Filed 12th July, 1949

Statement as to Jurisdiction under Rule Twelve

The petitioner and intervening defendant in the above-entitled action, Schreiber Trucking Co., Inc., concurrently with its Petition for Appeal and Assignment of Errors,

presents herewith its statement in support of its contention that the Supreme Court of the United States has jurisdiction on this appeal to hear this cause and to reverse the final judgment and decree of the District Court of the United States for the District of Maryland, dated May 13, 1949.

A. The Statutory Provisions Believed to Sustain the Jurisdiction

This appeal is entered by virtue of Title 28, Section 1253, of the United States Code, which provides for an appeal from the decree of a Three-Judge Statutory Court, as follows:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a District Court of three judges."

Under date of April 2, 1948, the Interstate Common Carrier Council of Maryland, Inc., filed its original complaint in this suit, in the District Court of the United States for the District of Maryland. Subsequently, under date of February 14, 1949, an amended complaint was filed whereby the Baltimore Transfer Company and the Davidson Transfer and Storage Company, common carriers by motor vehicle, were made additional parties complainant. The complaint in this case is brought to set aside the order of the Interstate Commerce Commission granting to your petitioner a Certificate of Authority to operate as a common carrier by motor vehicle in the transportation of general commodities over an alternate route from Baltimore, Maryland, to Philadelphia, Pa., via U. S. Highway No. 1, for operating convenience only.

The parties defendant to this case were the United States of America and the Interstate Commerce Commission of the

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United States of America and they were the sole parties appearing as such at the hearing thereon.

The said case therein was heard and decided by a Three-Judge Court in view of the nature of the complaint and as required by the provisions of Title 28 of the United States Code, Section 2325, which provides as follows:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or in part, of any order of the Interstate Commerce Commission shall not be granted unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this Title."

Under date of May 13, 1949, the said Three-Judge Statutory Court, sitting as the District Court of the United States for the District of Maryland, entered its final Decree declaring that portion of the Order of the Interstate Commerce Commission here under consideration to be invalid and set aside.

Thereafter your petitioner, pursuant to provisions of Title 28, of the United States Code, Section 2323, filed a Petition to Intervene as party defendant in this proceeding for the purpose of taking an appeal. This Petition to Intervene was based on the provisions of Section 2323, *supra:*

> "The Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an Order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel in any action involving the validity of such order or requirement or any part thereof, and the interest of such party.
>
> "Communities, associations, corporations, firms and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid sections, may intervene in said action at any time after commencement thereof.
>
> "The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend

or continue said action or proceeding unaffected by the action or non-action of the Attorney General therein."

It is respectfully submitted therefore, that by virtue of the fact that this case was tried before a Three-Judge Statutory Court as required by the provisions of Section 2325, *supra,* and further by reason of the provisions of Section 1253, which provides for a right of appeal to the Supreme Court of the United States in cases of this nature required to be heard by a District Court of three judges, and further by reason of the exercise by your petitioner of its right to intervene for the purpose of taking such appeal, all as provided by Section 2323, *supra,* your petitioner believes that jurisdiction of the Supreme Court of the United States attaches in this case.

B. The Statute of the United States under Which the Interstate Commerce Commission Exercised Authority

The statute under which the Interstate Commerce Commission of the United States exercised its authority in granting your petitioner a Certificate of Authority to operate over the route here in question is Title 49 U. S. C. A., Section 307:

"Issuance of certificate:

"(a) Issuance authorized to qualified applicants for regular routes and between fixed termini. Subject to section 310, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: Provided, however,

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That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

"(b) Certificate not to confer proprietary or property rights in highway. No certificate issued under this chapter shall confer any proprietary or property rights in the use of the public highways."

Pursuant to an application filed by your petitioner with the Interstate Commerce Commission a Certificate of public convenience and necessity was issued to your petitioner to operate as a common carrier of general commodities by motor vehicle over an alternate route from Baltimore, Maryland, to Philadelphia, Pa., via U. S. Highway No. 1, for operating convenience only.

The Commission's power and right and authority to issue this Certificate is found in Title 49 U. S. C. A., Sec. 307, *supra*. It is this Order and Certificate of the Commission which has been declared to be invalid by the Decree of the United States District Court for the District of Maryland and from which Decree your petitioner herein appeals.

C. Date of the Judgment and Decree Sought to Be Reviewed and the Date upon Which the Application for Appeal Is Presented.

The Decree of a Three-Judge Statutory Court sitting as the District Court of the United States for the District of Maryland from which this appeal is taken was filed on May 13, 1949. A copy of the same is attached hereto and marked Exhibit A.

The opinion of said Court upon which said Decree is based was filed April 13, 1949, and a copy is attached hereto and marked Exhibit B.*

---

* NOTE.—Opinion appended to Jurisdictional Statement in No. 265.

The Petition for Appeal herein was filed July 12, 1949, and was allowed July 12, 1949. The adjudication of the District Court of the United States for the District of Maryland was final in its nature on May 13, 1949, since it found to be invalid so much of the Order of the Interstate Commerce Commission as was under consideration in this proceeding, viz., the grant of authority to operate over an alternate route from Baltimore, Maryland, to Philadelphia, Pa., over U. S. Highway No. 1, for operating convenience only, and the said Decree remanded the same to the Interstate Commerce Commission, with instructions to exclude the same from any authority heretofore granted to the petitioner.

D. Statement Showing That the Nature of the Case and of the Rulings of the Court Were Such as to Bring the Case Within the Jurisdictional Provisions Relied upon.

The grant of a Certificate of Authority as herein described by the Interstate Commerce Commission to your Petitioner, and the filing of this complaint to set aside said Order as invalid is a matter of record as shown by the opinion of the District Court.

The District Court of the United States for the District of Maryland, acting upon said complaint, has found the action of the Interstate Commerce Commission in this respect to be invalid and has directed the revocation of said authority all as provided by the Decree of said Court, which is attached hereto as Exhibit A.

The provisions of the United States Code, as found in Title 28, Section 1253, *supra*, specifically authorize an appeal to the Supreme Court of the United States in such a proceeding. This case was tried before a statutory three-judge court as is required by Sections 2325 and 1253, *supra*.

It is, therefore, respectfully submitted that the nature of the case and rulings of the Court are such as to bring this case within the jurisdictional provisions relied upon.

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E. Statement of the Grounds upon Which It Is Contended That the Questions Involved Are Substantial

Your petitioner has been engaged in the trucking business for more than twelve years. It operates a fleet of 225 vehicles and has about 200 full time employees. Terminals are maintained at Pittsburgh, Chicago, Baltimore, Rochester, N. Y., and Washington, D. C. It is fit and able, financially and otherwise, to conduct its operations.

The record, which will include a summary of the testimony before the Interstate Commerce Commission, will show that the petitioner has been performing service between Baltimore and New York City and an adjacent territory in New Jersey for many years, and is transporting about ten truckloads of freight weekly between Baltimore and the New York City area. The existence of this service is recognized by the general public. The authority granted by the Interstate Commerce Commission to serve New York City from Baltimore, via Philadelphia would effect an operating economy in excess of $3700 per year.

The Interstate Commerce Commission in its opinion, which will constitute a part of the record in this matter, and as quoted in the opinion of the District Court of the United States for the District of Maryland, specifically holds that the petitioner had a regularly authorized route between Baltimore and New York via Harrisburg, Pa. The route via Philadelphia granted by the Certificate of Authority, and which route is here in issue, was authorized as an alternate route. The District Court of the United States by its opinion and Decree declaring the said Order of the Interstate Commerce Commission to be invalid, has seen fit, in the opinion of your petitioner, to substitute its judgment and discretion for that of said Commission. This, we believe, it is not entitled to do.

The right to decide whether certain transportation service is required by public convenience and necessity is for the Commission to determine. It is well settled law that the orders of the Interstate Commerce Commission are final, unless beyond the power that the Commission can constitutionally exercise; beyond its statutory power; or unsupported by substantial evidence. The decision of the District Court of the United States for the District of Maryland herein in declaring the Order of said Commission invalid meets none of these qualifications.

It is further submitted that the plaintiffs themselves have no standing to bring this suit. The Interstate Common Carrier Council of Maryland, Inc., is a membership association engaging in no business and operating no motor carrier lines. It is an association of motor carriers banded together for the purpose of protesting actions of the Interstate Commerce Commission, which they believe to adversely affect their interests and this in turn resolves itself usually to an attempt to keep down competition. The Baltimore Transfer Company and the Davidson Transfer and Storage Company did not personally enter an appearance before the Interstate Commerce Commission when this application was considered. They were represented by the Interstate Common Carrier Council of Maryland, Inc. Neither were these two carriers parties to the original bill of complaint. Your petitioner believes that these parties are not substantially or directly affected by the Order of the Commission and have failed to show or allege that the Commission's Order violates any of their specific legal rights. It follows that the institution of this suit was in itself invalid and should have been dismissed.

During the pendency of this suit the Interstate Commerce Commission issued its final Certificate of Authority embracing the alternate route from Baltimore to Philadelphia, which was the subject matter of this proceeding. The plaintiffs did not post supersedeas bond, nor ask for an order

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restraining the Commission from issuing the Certificate while suit was pending. With full knowledge that said suit was pending, the Commission issued its Certificate of Authority, the final evidence of your petitioner's right to perform the service therein described.

Title 49 U. S. C. A., Section 312a provides that Certificates shall be effective from the date specified therein and shall remain in effect until suspended or terminated as herein provided. Authority for revocation of a Certificate is provided in the event of lawful failure to comply with the provisions of this chapter of the Motor Carrier Act, or with any lawful order, rule or regulation of the Commission, or the terms of the Certificate. This is the only provision in the Interstate Commerce Act for the revocation of a Certificate and there are no facts alleged in this complaint justifying revocation based upon this section of the statute.

It is respectfully submitted that a sound public policy for the performance of public transportation requires that when a final Certificate has once been issued to a carrier, the carrier shall be entitled to rely upon the final nature of that Certificate and that the same shall not be subject to capricious or arbitrary cancellation, except as provided by the plain intent of Section 312a, *supra*. Your petitioner believes that insamuch as there is no cause of action for the cancellation of this Certificate under Section 312a, that neither the United States District Court for the District of Maryland, nor the Interstate Commerce Commission has a right to terminate the same by reason of the complainants' action herein.

It is respectfully submitted that the foregoing plainly shows that the plaintiffs' suit herein is invalid and that the plaintiffs have no standing for the purpose of instituting this action and further that the decision of the Interstate Commerce Commission in this respect is final and binding and is not subject to review by the District Court of the United States for the District of Maryland herein, and that

the same was based upon sound evidence of public convenience and necessity as supported by the record, and further that inasmuch as said Order of the Commission has ripened into the issuance of a Certificate of Authority, the same is not subject to revocation on the basis of the complaint field herein. The action of the District Court of the United States for the District of Maryland in finding to the contrary usurps the power and authority of the Interstate Commerce Commission, and its enforcement will impose great damage upon your Petitioner and will seriously affect public interest, public welfare, convenience and necessity, and is in direct conflict with the provisions of the law pertaining thereto. For these reasons, it is submitted that these questions affect interstate commerce and are substantial, and for these reasons this jurisdictional statement is submitted.

The following cases are cited in support of the Petitioner's contention plaintiffs have no standing to bring this suit:

Merchants Truckman's Bureau v. *U. S.*, 16 F. Supp. 998, 999;

Sprunt & Son v. *U. S.*, 281 U. S. 249, 254-55 (1930);

Moffat Tunnel League v. *U. S.*, 289 U. S. 113, 119-20 (1933);

Penna. R. R. Co. v. *U. S.*, 40 F. (2) 921, 925 (1930);

Indian Valley R. R. v. *U. S., et al.*, 52 F. (2) 485, 487 (1931);

Pittsburgh and W. Va. Rwy. Co. v. *U. S.*, 281 U. S. 479, 486-7 (1930).

The question as to whether certain transportation is required by public convenience and necessity is for the Commission to determine. See the following cases:

Interstate Commerce Commission v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547 (1912);

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Mississippi Valley Barge Line Co. v. *U. S.*, 292 U. S. 282, 286-7;
Va. Rwy. Co. v. *U. S.*, 272 U. S. 658, 663-666;
Western Paper Makers Chemical Co. v. *U. S.*, 271 U. S. 268, 271 (1926);
U. S. v. *Detroit & Cleveland Navigation Co,.* 326 U. S. 236, 240-41 (1945);
Interstate Commerce Commission v. *Parker*, 326 U. S. 60, 65 (1945);
Chesapeake & Ohio Rwy. Co. v. *U. S.*, 283 U. S. 35, 42 (1931);
U. S. v. *Pierce Auto Freight Lines, Inc.*, 327 U. S. 515, 535-6 (1946);

and other cases.

The Commission and courts are without power to revoke this Certificate. See the following cases:

Smith Brothers Revocation Case, 33 MCC 465;
U. S. of America and Interstate Commerce Commission v. *Seatrain Lines, Inc.*, 6 F. C. C. 80367;
Quaker City Bus Co., Purchase—Blackhawk Lines Inc., 34 MCC 603;
Manhattan Coach Lines v. *Adirondack Transit Lines*, 42 MCC 123;
Boulevard Transit Lines v. *U. S.*, 77 F. Supp. 594, 595.

Respectfully submitted,

HALL HAMMOND,
Attorney for Schreiber Trucking Co., Inc., Intervening Party Defendant;

CLAYTON W. DANEKER,
Of Counsel;

LOUIS E. SMITH,
Of Counsel.

APPENDIX A

DECREE OF COURT

Filed 13th May, 1949

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

Civil Action No. 3959

INTERSTATE COMMON CARRIER COUNCIL OF MARYLAND, INC., THE BALTIMORE TRANSFER COMPANY, and DAVIDSON TRANSFER AND STORAGE COMPANY, *Plaintiffs*,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES OF AMERICA, *Defendants*

Decree

The above cause came on regularly for trial on the 16th day of March, 1949, before a statutory court composed of three judges and said court having examined the pleadings and the reports of the Interstate Commerce Commission which were submitted, and said court having heard the arguments of respective parties and having fully considered such pleadings, records and arguments, and having herein filed its written opinion and findings of fact and conclusions of law:

NOW THEREFORE it is hereby decreed as follows:

So much of the Order of the Interstate Commerce Commission as is under consideration in the within proceeding, viz., the grant of authority to Samuel Schreiber and Mrs. Harry Schreiber, d/b/a Schreiber Trucking Company, to operate over an alternate route from Baltimore, Md., to Philadelphia, Pa., over U. S. Highway No. 1, for operating convenience only, is invalid and is hereby set aside, and the case be and the same is hereby remanded to the Interstate Commerce Commis-

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sion with instructions that the Commission shall exclude from any authority heretofore granted to Samuel Schreiber and Mrs. Harry Schreiber, d/b/a Schreiber Trucking Company, the right to operate over the said alternate route and shall take such further action, if any, as to it seems proper and in accord with the written opinion filed herein and the Clerk is hereby directed to forward a copy of the decree to the Attorney General of the United States and to the Interstate Commerce Commission.

MORRIS A. SOPER,
United States Circuit Judge;

WILLIAM C. COLEMAN,
United States District Judge;

W. CALVIN CHESNUT,
United States District Judge.

V-13-'49.

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No. 265. UNITED STATES ET AL. *v.* INTERSTATE COMMON CARRIER COUNCIL OF MARYLAND, INC. ET AL.; and

No. 266. SCHREIBER TRUCKING CO., INC. *v.* INTERSTATE COMMON CARRIER COUNCIL OF MARYLAND, INC. ET AL. Appeals from the United States District Court for the District of Maryland. *Per Curiam:* The judgment is affirmed. *Florida* v. *United States*, 282 U. S. 194; *United States* v. *Carolina Carriers Corp.*, 315 U. S. 475. MR. JUSTICE BLACK and MR. JUSTICE REED are of the opinion

that probable jurisdiction should be noted and the cases set down for argument. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these cases. *Solicitor General Perlman* and *Daniel W. Knowlton* for appellants in No. 265. *Hall Hammond* for appellant in No. 266. *John R. Norris* for appellees. Reported below: 84 F. Supp. 414.

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